

PUBLIC COPY

U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to
prevent identity, unwarranted
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

FILE: WAC 01 260 55110 OFFICE: CALIFORNIA SERVICE CENTER

DATE: JAN 09 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

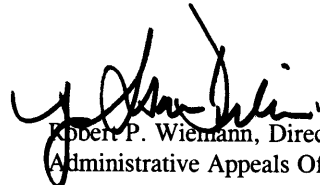
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is an independently owned real estate company that employs 20 persons and has a gross annual income of \$725,058. It seeks to employ the beneficiary as an Administrative Services Manager. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

The motion does not satisfy the requirements of a motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding. See 8 C.F.R. § 3.2(c)(1). No new documents are submitted on motion.

The motion does, however, meet applicable requirements for a motion to reconsider and the AAO has reviewed it accordingly.

Upon full consideration of all the matters presented on motion, the AAO has determined that it does not establish a basis under 8 C.F.R. § 103.5 (a)(3) for withdrawing the denial and approving the petition. That is, the motion does not establish that the AAO decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy to the evidence of record at the time of the decision.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

On motion, counsel urges a number of grounds for withdrawing the AAO's previous decision and approving the petition.¹

Counsel makes an "observation" to the effect that, with regard to the H-1B specialty-occupation status of management positions, CIS policy and adjudications, including the AAO decision on the appeal in this proceeding, are inconsistent with marketplace reality:

¹ As noted in counsel's September 23, 2003 letter to the Ombudsman of the California Service Center, the record as presently constituted is a reconstructed version that counsel has supplied after the loss of the original record in CIS channels.

It is the observation of this Attorney of Record that (1) the positions taken by the AAO is [sic] inconsistent with reality and current conditions in the U.S. business market place concerning the area of "degree holding and non-degree persons holding management positions," and, (2) Immigration and Naturalization Service (INS) employees acting in the name of the Director of the AAO in following guidelines, directives, OI's, Headquarter's Memos concerning "complex and specialized occupations."

The AAO focuses only on the evidence of record, and the evidence of record does not substantiate this observation of counsel. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, counsel's "observations" here and elsewhere in the record have no evidentiary value, although they may serve to focus the AAO review on specific issues of concern to counsel. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The evidence of record does not establish that the specific duties of the proffered position qualify it as a specialty occupation under any one of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, in six separately numbered subparagraphs, counsel outlines particular aspects of the AAO decision that he contends manifest that the author "was abusing his/her discretion, acting in an arbitrary and capricious manner, with a predisposed intent to deny this appeal." This decision will address each of counsel's specific issues in the order in which he raises them.

Counsel first contests the AAO's unfavorable evaluation of the witness letters on the specialty occupation issue. That the decision discounts the letters as unpersuasive is clear in the statement, upon which counsel focuses, that none of the letters' authors provided "any credentials setting forth his or her ability to give expert testimony regarding the question of whether the proffered positions [sic] qualifies as a specialty occupation." Here follows a review of the witnesses related to this issue.

Ms. Bilderback's educational credentials include "Bachelors Degrees in Business Administration, Management and Marketing (BBA), a Masters of Business Administration (MBA)" and completion of "50% of the coursework toward a Master's Degree in Manufacturing Systems Engineering." During "the past 20+ years of her career," Ms. Bilderback has also "held a variety of management positions of increasing responsibility for many Fortune 500 companies in the United States," including "upper level management and executive level positions." For two and

one-half years she has been the president of a small management consulting and inventory service, and she serves as an Adjunct Professor of Business Management at the Community College of Southern Nevada. Ms. [REDACTED] letter states that she has "reviewed both the company and the prospective employee," whom she has also had as a student in a diversity management class.

The record does not establish that the AAO had improperly evaluated the evidentiary weight of Ms. [REDACTED] opinion. None of her credentials indicate that Ms. [REDACTED] has had any training, schooling, or experience in interpreting and applying the Act or its regulations with regard to the H-1B classification. It is not evident in her letter that Ms. Bilderbeck has pursued academic studies of or has had any work experience in the petitioner's industry. Furthermore, Ms. Bilderbeck does not describe what constituted her "review" of the petitioner's business.

Professor Stefanalli's memorandum does not address the petitioner's business at all. Rather, it responds to a request from the beneficiary "to provide an advisory opinion on the questions of academic requirements needed by persons pursuing management careers in today's hospitality industry environment." Also, the letter states that the professor's opinion is based on a review of "the job title and a description of the proposed duties to be performed by her position as general manager overseeing the operation and management of four (4) restaurants." Not only did Professor Stefanalli opine on a job other than the one in question here, but also his credentials do not endow him with any expertise in the petitioner's industry: he has been in the food and beverage industry for approximately 39 years, and he is a professor in a department of food and beverage management at a university's college of hotel administration. The record indicates not only that this witness has no special competency in the petitioner's field, but also that his opinion is irrelevant because it is based on a position other than the one proffered here.

Professor Azizsoltani, who teaches at the same food and beverage department as Professor Stefanalli, refers to his 20 years in restaurant management, and, like Professor Stefanalli, opines on a position other than the one proffered here, namely, "general manager of four restaurants." As with Professor Steffanalli, the record fails to establish this witness's special competency on the issues at hand, and his opinion is not relevant to the proffered position.

Dean Mann, of the same college as the other two professors, comments on the educational requirements of a position other than the one proffered. He opines that a bachelor of science degree in hotel administration from the University of Nevada well prepares

a graduate for a position as an assistant manager in the hospitality management field. [REDACTED] also observes that the hospitality and tourism fields, though service industries, have become so technical that a high school education will no longer suffice for entry-level assistant manager positions.²

Ms. Chen has "a BA from National Taiwan University and an MPA from the University of Nevada." She stated, "I have been associated with Alexander Scott & Associates (ASA) a management consulting company with headquarters in Atlanta, Georgia, in the capacity of Management Consultant." Ms. Chen stated that ASA has been in the management development business since 1977, but she does not state how long she worked there. It is not evident that any of the ASA clients listed by Ms. Chen were in the same business as the petitioner. Ms. Chen also states that, prior to moving to Las Vegas (petitioner's location), she worked for Motorola Semiconductors and Digital Equipment Corporation in Asia for over 18 years. She notes, "As the Regional Director of Human Resources, I gained extensive knowledge in Asian Countries." According to Ms. Chen, her "area of expertise includes planning and managing organizational changes, [and] designing and leading human resources activities throughout Asia." Ms. Chen also states that, "from time to time," the petitioner has sought her advice "in its development and expansion." No further information is provided about contact with the petitioner's business.

Ms. Chen does not state any experience in assessing degree requirements for businesses, and the AAO will not speculate as to the details of her particular duties in her stated area of expertise - "planning and managing organizational changes, designing and leading human resources activities throughout Asia." Accordingly, the AAO assessment of her relevant credentials is justified by the record.

Furthermore, aside from the credentials issue, Ms. Chen's letter does not establish a clear factual basis for her opinion. The letter does not establish that she has had extensive contact with the petitioner's business, does not give any details about the "development and expansion" matters upon which she advised the petitioner, and does not elucidate the extent to which she examined the petitioner's operations in order to reach her opinion. Also, while she opines that the proffered position requires "a bachelor degree in business administration or its

² It is noted that [REDACTED] letter was not addressed in the AAO's decision. This fact, the letter's relatively old date (April 7, 1999), and its content makes its presence in the original record questionable. However, on motion, the AAO treats it as if it were part of the original record.

equivalent," Ms. Chen does not elaborate on what specialized coursework associated with a generalized bachelors degree in business administration she deems necessary for the proffered position. Accordingly, on motion the AAO considered but gave no special weight to Ms. Chen's opinion that a bachelors degree in business administration is the minimum requirement for the proffered position.

The AAO decision on the appeal addressed a letter from a Dr. Betty Scott, Former Department Chair, Business Management, at the Community College of Southern Nevada. The AAO decision quoted Dr. Scott as stating:

I have reviewed the Nevada Real Estate Corporation Office Manual job description for the position of Administrative Services Manager. In my judgment, successfully fulfilling the responsibilities of that job requires a well-developed awareness, understanding and set of managerial skills . . . A Bachelor's Degree is a wise and appropriate minimum.

Assuming that this quotation accurately conveys the sense of the letter, Dr. Scott's credentials are unimportant, because she does not opine that the proffered position requires the type of bachelor's degree required by a specialty occupation, that is, one in a specific specialty.³

Professor James Cross, a professor of marketing at the University of Nevada, Las Vegas, enclosed with his letter a four-page resume which establishes extensive credentials in the field of marketing. He opined, in part, that that the petitioner "filled a very unique position in the Southern Nevada real estate market place," and that "a twenty agent organization that deals with wealthy Chinese investors is rare in itself." Professor Cross also stated, "I would think that the position offered is so complex and unique that it could only be filled by a highly trained person with special skills." He also asserted:

As a professor of marketing[,] it is my opinion that the position offered is not a generalist manager's job but one that needs to be filled by a professional trained person who has the ability to deal with unique and complex issues. Certainly this is a unique segment of the market and it requires specialized expertise.

This witness closes with a comment about his belief that "an interesting marketing concept called the "similarity hypothesis"

³ This letter is not in the reconstructed record that is before the AAO on this motion.

applies to the proffered position:

[B]riefly, this theory purports that customers prefer dealing with sales people or other business people they view as "similar" to themselves. This situation appears to be present in [the beneficiary's] position. There is substantial empirical evidence to support the "similarity hypothesis." It has been presented in scholarly marketing and psychology journals over the past thirty years.

Clearly, Professor James Cross has special competence in the field of marketing. This merits special weight for his opinion on the application of the similarity hypothesis, for instance, which is not decisive in this proceeding. However, this does not ascribe special weight to his opinions on matters outside his expertise in marketing.

Regardless of the extent of Professor Cross's expertise, however, his statements do not establish the proffered position as a specialty occupation. For instance, his opinion that the position needs to be filled "by a professional trained person who has the ability to deal with unique and complex problems" does not state the need for a person with a minimum of a baccalaureate, or its equivalent, in a specific specialty. Neither does his statement, "I would think that the position offered is so complex and unique that it could only be filled by a highly trained and educated person with special skills." Furthermore, the lack of factual specificity limits the evidentiary value of Professor Cross's letter: for instance, he does not particularize the performance aspects of the position which lead him to conclude that it is "so complex and unique that it could only be filled by a highly trained and educated person with special skills."

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). For reasons discussed above, the AAO decision did not err in its evaluation of the letters' persuasive weight on the specialty occupation issue.

Counsel next questions the reasonableness of the AAO decision's asserting, "The beneficiary's transcript from the University of Nevada, Las Vegas, does not indicate that she took any courses in Chinese language or Chinese culture during her studies at that institution." Counsel states, in part:

[The beneficiary] **is Chinese**. Read her resume. Why would someone born in the China, raised and educated in China and entering the U.S. on a Chinese passport with a U.S. visa issued in China have to take a "course or courses in Chinese language or Chinese culture during her studies" in the United States to be qualified in speaking and understanding Chinese? (Emphasis in original.)

The statement about the beneficiary not having taking courses in the Chinese language or Chinese culture does not indicate that the decision was unreasonable, arbitrary, capricious, or prejudged. In the context of the paragraph in which it appears, it is an explanation of the AAO's finding that "while the petitioner requires that its administrative services manager speak Chinese and understand Chinese culture, there is no evidence in the record to show that that the knowledge required to perform this aspect of the job is usually associated with the attainment of a of a baccalaureate or higher in Chinese language and culture."

The third issue that counsel raises is the AAO decision's treatment of "documentation from third parties identifying that similar businesses require such a position to be held by a person holding a bachelor's degree." Counsel notes that the visa application identified a bachelor's degree or its equivalent as a requirement. He also states, in part:

Just read your Examiner's "put down" of these witnesses. It is general knowledge that Southern Nevada is one of the fastest growing areas in the U.S. Investors flock to this area from world wide. One of the witnesses states that he owns a company similar to [the petitioner] and he only hires degreed professionals to hold similar positions as the one offered [the beneficiary].

Counsel's complaint about the "put down" of witnesses on the degree requirement in similar businesses apparently refers to the letters from: (1) Mei-Fan Hung, an employment consultant at Sierra Health Services; and (2) the owner of Ideal Realty and Management, Inc. The AAO decision on the appeal addressed these letters separately from those which the decision discounted because of witnesses' lack of credentials.

On the basis of seven years in a human resources position, of which the last two involved responsibility for "hiring qualified candidates into positions according to job descriptions that were provided to me," Mei-Fan Hung opined that the proffered position requires a "bachelors degree in the area of social science," and

that a bachelors degree in hotel management "will be a match" because, like the petitioner's business, hotel management is a customer service business that seeks to provide the best possible customer satisfaction. As reasons for his opinion, this witness stated that: the incumbent would have to have "[the] proper credential" in order to guide and gain the trust of a team of employees of whom 90 per cent have a bachelor's or master's degree; it is common to hire someone with at least a bachelor's degree for positions like the one proffered here, because "they [sic] have already received the proper training" in the strong analytical skills that are "important in the areas of budgeting and planning"; and, based on the job description, it is "very unlikely that a candidate without proper undergraduate training will be successful in the job."

Ideal Realty & Management, Inc. is a business similar to the petitioner's. The owner's letter stated that the proffered position is similar to that firm's Operating Office Manager, that all of Ideal Realty & Management's sales and consulting personnel hold university degrees, and that all the firm's managers have held at least a baccalaureate. According to this letter, the proffered position requires someone with at least a bachelor's degree in order to gain the respect and confidence of the upper class Chinese people that are "the major market target." The letter closed on a note of "firm agreement" with the petitioner's owner that "the job offered requires a college graduate to fill in her company's Administrative Service's Manager's position."

The AAO surmises that the so-called "put down" of these witnesses appears in this statement, with which the AAO decision summarized its assessment of the letters from Mei-Fan Hung and Ideal Realty & Management, Inc.:

The petitioner has not shown that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross national income, require the services of individuals with a bachelor's degree in a specialized area in parallel positions. It is noted that the petitioner has submitted letters from an unidentified official (signature illegible) of Ideal Realty & Management, Inc. and from Mei-Fan Hung, Employment Consultant for Sierra Health Services, Inc. Both authors state that it is common in the Las Vegas area for reality companies dealing with Chinese clientele to require a bachelor's degree for similar positions. However, two letters do not establish an industry standard. Furthermore, the authors do not indicate that realty companies in the Las Vegas area routinely require a bachelor's degree in a specific, specialized area for similar positions.

Despite counsel's contention, the AAO's assessment of the evidentiary impact of these letters was appropriate, well tempered, and merited by their content. These witnesses have negligible weight, for they opine only that a bachelor's degree is required, rather than a bachelors degree in a specific specialty; and they do not present comprehensive information about the industry hiring standard for position's like the one proffered here.

Next, counsel contends that the AAO decision ignored the specialized and complex nature of the petitioner's business. Asserting that the petitioner's owner has informed him that "there are probably less than thirty companies across the U.S. that specialize in selling and managing real estate for wealthy non-resident Chinese," counsel asks, "If this is not a specialized and complex business[,] what is?" Counsel then states, "after forty years of fee generating legal practice, actively managing large law firms, owning and managing international operating businesses," he "is in total disagreement" with the author of the decision, "whose qualifications/credentials in the area of human resource placement for non-governmental businesses are unknown to both the Attorney of Record and the general public as to the entry requirements of this position or the unquietness [sic] or complexity of the Petitioner's business."

Broadly construed, counsel's words appear to contend that the AAO decision ignored evidence that was sufficient to establish the proffered position as an H-1B specialty occupation by virtue of its complexity, uniqueness, and specialization.

As noted earlier, statements by counsel unaccompanied by supporting documentary evidence do not constitute evidence. Also, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, counsel's statements about facts not in the record (such as what the petitioner's owner told him) and observations about his own professional credentials or experience have no evidentiary weight. Counsel's questioning of the human resources qualifications of the officer who decided the appeal is irrelevant: CIS officers adjudicating an appeal must base their decisions on evidence in the record, without introducing off-the-record, personally acquired information into their deliberations.

Despite counsel's contention to the contrary, the record does not establish that the proffered position qualifies as a specialty occupation under the qualifying criterion of either: (1) 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a "particular position . . . so complex or unique that it can be performed only by an individual with a degree," or (2) 8 C.F.R. § 214.2(h)(4)(iii)(A)(4),

"specific duties . . . so specialized and complex that knowledge required to perform [them] is usually associated with the attainment of a baccalaureate or higher degree."

In this regard, based on the evidence of record, it appears that knowledge of Chinese culture, the ability to speak Chinese, and at least a bachelor's degree in some field are important factors in the ability of the holder of the proffered position to deal effectively with Chinese clients and subordinate Chinese employees. However, even combined with all the evidence of record, this fact does not meet any of the qualifying factors of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4). Given the evidence of record, it appears that a speaker of Chinese who has knowledge of Chinese culture and a bachelor's degree in any discipline would be able to satisfy the language, cultural, and degree requirements that the petitioner believes are relevant to its market and employees. Also, the fact that relatively few real estate and real estate management concerns may specialize in the petitioner's market does not add any dimension of uniqueness, specialization, or complexity that would not be managed by a person who speaks Chinese, has adequate knowledge of Chinese culture, and holds a bachelor's degree in any discipline.

Counsel frames the next issue as his "total disagreement of [sic] the Examiner's interpretation of the cited cases found in the Attorney of Record's brief." The motion cites three specific instances:

[T]he Examiner makes no comment as to the findings of [REDACTED] 19 I&N Dec. 558 (Comm. 1988). *Artic Catering v. Thornburgh*, 769 F. Supp. 1167 (D.C. Colo. 1991) explores a similar situation and held for the Petitioner. A reading of the law as pertaining to this case should certainly include *Matter of* _____, A24-884-188, (Boston, EAC, AAU, March 1986).

There was no requirement for the AAO decision to comment on [REDACTED] which applied provisions of the Act and implementing regulations that have been revised and were no longer in effect when the petition in this proceeding was filed. The AAO decision correctly distinguished *Artic Catering v. Thornburg* from the proceeding at hand. Contrary to counsel's contention, the factual situation in that case is not similar to the petitioner's: as the AAO decision correctly stated, the position in that case was "a manager of a firm which caters to the living needs of workers at geophysical and mining camps in remote regions of the world."

The other, unnamed decision has no precedential value. See 8 C.F.R. § 103.3(c).

The AAO decision correctly assessed that "the facts in those cases are not parallel to those in this case." In *Hong Kong T.V. Video Program*, the petitioner sought to employ a president and chief executive officer of its foreign-language video cassette business. The proffered position in *Tapis International* was that of a showroom manager at an interior design firm.

Also, the AAO decision correctly noted that *Hong Kong T.V. Video Program* applied a "membership in the professions" qualifying criterion that had been superseded by revisions in the Act that introduced the "specialty occupation" standard prior to the filing of the petition in this proceeding.

On motion, the AAO further notes that the evidence of record did not establish a factual situation like that of the showroom manager position in *Tapis International*, where the court determined that the position qualified as a specialty occupation because of undisputed evidence that it required a combination of a bachelor's degree from a limited number of fields (marketing or business) in addition to specialized design experience.

Counsel next asserts an abuse of discretion in the conclusion that the petitioner "has failed to establish that any of the four factors enumerated above are present in this proceeding." On motion, review of the complete record does not substantiate this general contention, or counsel's claim that the petitioner has met not one but all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The final error asserted by counsel is that the AAO decision applied an incorrect and unrealistic standard with regard to management positions.

But what is the real question to be reviewed? Most people finishing high school go on to seeking higher education. Thirty/forty years ago the median standard of education was a high school diploma. Today, in most non-government jobs, the basic entry requirement is either an associate or bachelor's degree. In the world market place the U.S. is a white collar job market. You just don't find much on the job training any more. A great majority of our country's low end jobs have gone abroad. Organizations like Panda Express fast food establishments set nationwide standards by requiring their managers to have at least a bachelor's degree. The standard set by the AAU in the area of management jobs needs to be reviewed even before it looks to the area of specialized and complex duties. It is just not in tune with the marketplace. Today, a manager of human resources must deal with state and federal tax, health, environmental and safety problems. He/she also has to deal with on the job personality

social and financial problems, and numerous other areas that schooling has exposed them to. Most non-schooled persons would not be hired by industry to management jobs because of liability and litigation issues alone. Revisit the marketplace and you will rarely find a non-government establishment hiring a non-degreed person to a management position.

Counsel's comments about the current marketplace requirements do not constitute evidence. As described, evaluated, and otherwise presented by the evidence in the record, the proffered position does not meet any of the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Because the above paragraph appears to overlook this fact, it is worth noting that CIS consistently interprets "degree" in 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean one in a specific specialty that contains highly specialized knowledge that must be applied to perform the proffered position. The AAO decision on appeal accurately applied this standard.

The record establishes that the AAO decision on the appeal is supported by substantial evidence in the record. The motion does not establish that the decision was based on an incorrect application of law or CIS policy. Accordingly, the AAO shall not disturb the decision on the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The previous decision of the AAO, dated June 24, 2002, is affirmed. The petition is denied.